

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 47.1 and 17A.4, the Secretary of State hereby amends Chapter 21, “Election Forms and Instructions,” and Chapter 28, “Voter Registration File (I-VOTERS) Management,” Iowa Administrative Code.

The Secretary of State removes rule 721—21.100(39A,47), which, in addition to being proposed under Notice of Intended Action in **ARC 0271C** in the August 8, 2012, Iowa Administrative Bulletin (IAB), was Adopted and Filed Emergency and published in **ARC 0272C** in the same August 8, 2012, IAB. The Secretary removes this rule because the rule was misinterpreted as attempting to provide a mechanism to circumvent Iowa Code sections 48A.14 through 48A.16 and caused concern that registered voters would be removed from the voter registration rolls following anonymous complaints. Although that was not the Secretary’s intent when adopting the rule, the number of concerns that have been raised regarding that provision resulted in the Secretary’s determination that the rule should be rescinded.

In order to ensure the integrity of Iowa elections and to protect the rights of voters, the Secretary of State also replaces rule 721—28.5(47,48A), which also was Adopted and Filed Emergency in **ARC 0272C** and published under Notice in **ARC 0271C** and which establishes procedures for the Secretary of State to identify and communicate with noncitizens who may be registered to vote in Iowa, with a new rule 721—28.5(47,48A) which incorporates revisions to address concerns that were raised in the public comments submitted to the Secretary of State’s office and during the Administrative Rules Review Committee meetings. New rule 721—28.5(47,48A) adopted in Item 2 herein extends the time frame for registrants to respond to a notice from the Secretary of State and adds specificity to clarify the procedure that will be followed by the Secretary of State’s office when completing the match and communicating with registrants affected by the rule.

These amendments were published under Amended Notice of Intended Action in the Iowa Administrative Bulletin on December 12, 2012, as **ARC 0528C**. Comments were received from members of the public during a public hearing held on January 3, 2013, and from members of the public and legislators during the Administrative Rules Review Committee meeting on January 9, 2013. Written comments were also received from members of the public. After full consideration of all public comments received, the Secretary makes the following nonsubstantive changes to the content of rule 721—28.5(47,48A). The words “predetermined search criteria, including” were removed from subrule 28.5(1). The words “predetermined search” were removed from subrule 28.5(2). These changes were made to clarify that the criteria listed in the rule are the only criteria that will be considered when the voter registration list is matched with a list of foreign nationals. The term “dispute” was changed to “correct” in subrules 28.5(2) and 28.5(3). The phrase “if the registrant is not a United States citizen” was also added to the sentences regarding requests for cancellation of individual registration records in the letter and notice prescribed by subrules 28.5(2) and 28.5(3). Finally, the first sentence of the second paragraph of subrule 28.5(2) was revised to require that the first letter to a registrant identified as a noncitizen under this rule be sent by certified mail.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 39A, 48A, 49 and 53.

These amendments will become effective March 27, 2013, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Rescind rule **721—21.100(39A,47)**.

ITEM 2. Rescind rule 721—28.5(47,48A) and adopt the following **new** rule in lieu thereof:

721—28.5(47,48A) Noncitizen registered voter identification and removal process.

28.5(1) *Matching of foreign national files and the voter registration list.* Matches between lists of foreign nationals obtained by the secretary of state from a federal or state agency and the voter registration list shall be based on a combination of a registrant's name, driver's license number, date of birth or last four digits of the registrant's social security number. The match may be completed as often as the secretary of state deems necessary, but not more than once a quarter.

28.5(2) *Confirming matches between the foreign national file and the voter registration list.* After producing a list of probable matches based on the criteria listed in subrule 28.5(1), the secretary of state shall determine whether the registrant has obtained citizenship status subsequent to the date on which the record in the file obtained from the other federal or state agency was generated. This determination shall be made by obtaining access to the Systematic Alien Verification Entitlement (SAVE) program administered by the United States Department of Homeland Security or to an equivalent database administered by the United States Department of Homeland Security.

Following verification that a registrant is not a United States citizen, the secretary of state shall send the registrant a letter and a response form by certified mail that the registrant may use to respond to the information received by the secretary of state. The letter shall inform the registrant of the source of the information received by the secretary of state (e.g., driver's license files from the Iowa department of transportation), provide the registrant with information regarding how to correct the information obtained by the secretary of state, and provide the registrant with information regarding how to voluntarily remove the registrant's name from the voter registration list if the registrant is not a United States citizen. A postage-paid return envelope shall be included with the letter and response form. The response form shall include spaces for the registrant to indicate that the information received by the secretary of state is either correct or incorrect and a space for the registrant to indicate that the registrant needs more time to provide a response. In the event a registrant indicates that the registrant needs more time to provide a response, the secretary of state shall not proceed under subrule 28.5(3) for a minimum of 60 days from the date the letter was originally mailed.

28.5(3) *Registered voter notification.* Upon receipt of information indicating that a noncitizen is registered to vote, the secretary of state shall take the following steps.

a. Subsequent notice. If the registrant does not respond to the initial letter from the secretary of state sent pursuant to subrule 28.5(2) within 30 days from the date the letter was originally mailed, the secretary of state shall send the registrant a subsequent notice informing the registrant of the source of the information received by the secretary of state (e.g., driver's license files from the Iowa department of transportation). The subsequent notice shall also provide the registrant with information regarding how to correct the information obtained by the secretary of state, provide the registrant with information regarding how to voluntarily remove the registrant's name from the voter registration list if the registrant is not a United States citizen, and list the penalty for being registered to vote while knowing oneself not qualified. A postage-paid return envelope shall be included with the notice and response form. The response form shall include spaces for the registrant to indicate that the information received by the secretary of state is either correct or incorrect and a space for the registrant to indicate that the registrant needs more time to provide a response. In the event a registrant indicates that the registrant needs more time to provide a response, the secretary of state shall not proceed under paragraph 28.5(3) "b" for a minimum of 60 days from the date the notice was originally mailed.

b. County auditor notification.

(1) If a registrant receives a notice from the secretary of state pursuant to paragraph 28.5(3) "a" and fails to respond to the notice within 30 days from the date the notice was originally mailed, the secretary of state shall notify the county auditor that the secretary of state has received information indicating that the registrant may not be a citizen of the United States and may be illegally registered to vote. The county auditor shall notify the precinct election officials working at the polling places on election day that the secretary of state has indicated that a registrant appearing on the election register for an election may

not be a United States citizen and shall be challenged by the precinct election officials if that registrant attempts to vote.

(2) The county auditor shall notify the secretary of state when any registrant who is the subject of one of these notices voluntarily requests cancellation of the registrant's record.

c. Noncitizen registrant with active absentee ballot request. If a county auditor receives notice pursuant to this rule from the secretary of state for a registrant who has an active absentee ballot request on the registrant's record, the county auditor shall attach the notice from the secretary of state regarding the registrant to the voter's absentee ballot affidavit envelope if the absentee ballot is returned to the auditor's office. The county auditor shall instruct the precinct election officials to challenge the voter's absentee ballot as provided in Iowa Code section 53.31.

d. Noncitizen registrant with voting history on voter record. If a county auditor receives notice pursuant to this rule from the secretary of state for a registrant who has a previous voting history on the voter's record, the county auditor shall immediately print a copy of the voter's voting history, make copies of any signed election registers or absentee ballot affidavit envelopes that are still in the custody of the county auditor and make a copy of the notice received by the county auditor pursuant to this rule. The foregoing list of documents shall be forwarded to the secretary of state within 30 days of receipt of the notice.

28.5(4) Removing confirmed matches from the voter registration list. A registered voter shall only be removed from the voter registration list following the voter's request for removal or the completion of the legal process set forth in Iowa Code sections 48A.14 through 48A.16.

This rule is intended to implement Iowa Code chapters 39A, 48A, 49 and 53.

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